

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

Criminal Action No. 3:95CR12-10
(STAMP)

KEVIN WINSTON,

Defendant.

ORDER ADOPTING REPORT AND RECOMMENDATION
AND REVOKING SUPERVISED RELEASE

On February 26, 2004, the probation officer supervising defendant, Kevin Winston, filed a petition to revoke defendant's supervised release on the basis that defendant violated two conditions of supervised release by failing to report to the probation office for the months of January and February 2004 and failing to report a change of address. In addition, the defendant violated conditions of his supervised release when a warrant was issued by the Berkeley County Magistrate Court, charging the defendant with domestic battery. On August 17, 2005, Magistrate Judge David J. Joel conducted a preliminary hearing on the petition. Magistrate Judge Joel issued a written report on August 18, 2005, recommending that: (1) defendant's supervised release be revoked; (2) defendant serve a four (4) month term of incarceration; (3) defendant's term of supervised release be terminated after his release from custody; and (4) defendant be given credit for time served since being discharged by the State of West Virginia on July 5, 2005.

Magistrate Judge Joel's report and recommendation informed the parties that they could file written objections within ten days of

service, and warned that a failure to file objections would waive the party's appellate rights should this Court adopt the magistrate judge's recommendations. 28 U.S.C. § 636(b)(1); Thomas v. Arn, 474 U.S. 140 (1985).

Neither party has filed objections to the report and recommendation.

This Court has reviewed the matters before it, agrees with the magistrate judge's recommendation. Accordingly, it is ORDERED that the defendant's supervised release be REVOKED. The defendant shall serve a four-month term of incarceration in the custody of the Bureau of Prisons. After the discharge of that period of incarceration, the defendant shall not be placed on supervised release, pursuant to 18 U.S.C. § 3583(e). The defendant shall remain in the custody of the United States Marshals Service until he receives his designation from the Bureau of Prisons. Defendant shall receive credit toward his four-month sentence for all time served since being discharged by the State of West Virginia on July 5, 2005.

A judgment and commitment order shall issue.

It is so ORDERED

The clerk is directed to transmit true copies of this Order to the defendant, all counsel of record herein, and the appropriate agencies.

DATED: September 1, 2005


FREDERICK P. STAMP, JR.
UNITED STATES DISTRICT JUDGE